

## **Interagency Task Force on Worker Classification**

Second Annual Report - December 31, 2021

**Background:** On September 11, 2020, Governor Parson issued *Executive Order 20-15* creating the Interagency Task Force on Worker Classification. The task force was charged with facilitating communication of investigations and enforcement of worker misclassification matters by the Departments of Labor and Industrial Relations (DOLIR), Revenue (DOR), Commerce and Insurance (DCI), and other relevant agencies. This includes, but is not limited to:

- Examining and evaluating existing misclassification enforcement by agencies;
- Facilitating sharing among Task Force members of information related to suspected worker misclassification violations, in a timely manner as permitted by law;
- Developing recommendations for pooling, focusing, and targeting investigative and enforcement resources;
- Assessing existing methods, both within Missouri and in other jurisdictions, of preventing, investigating, and taking appropriate enforcement actions against worker misclassification violations, and to develop best practices for participating agencies to improve their prevention and enforcement efforts;
- Working cooperatively with business, labor, and community groups interested in reducing worker misclassification, including but not limited to: 1) seeking ways to prevent worker misclassifications, such as through the further dissemination of educational materials and community outreach regarding the legal difference between independent contractors and employees; and 2) enhancing mechanisms for identifying and reporting worker misclassification where it does occur;
- Increasing public awareness and community outreach to explain the illegal nature of and harms caused by worker misclassification; and
- Reviewing statutes and regulations related to worker misclassification and recommending any appropriate changes to relevant legislation or administrative rules.

The Task Force reports to Governor by December 31<sup>st</sup> of each year, with a final report due by the end of 2024.

### **First Task Force Meeting of 2021: March 18, 2021, 3:00 p.m.**

*Topic of Discussion: What is an "Employee?"*

After Director Anna Hui, Task Force Chair, called the meeting to order and a quorum was established, she led a discussion of recent developments in worker classification around the country. Chair Hui proposed working on a uniform definition of "employee" for all state agencies and identifying any hurdles to achieving a uniform definition.

DeSheila Milton from DOLIR's Division of Employment Security (DES) demonstrated DES' online portal for determining employment status. There was discussion of expanding the current Missouri business portal (maintained by the Department of Economic Development) to address worker classification. Members of the task force viewed the "Open for Biz" webpage (<https://openforbiz.mo.gov/>).

There was additional discussion of working groups to explore the concept of a uniform worker classification and to identify opportunities to educate the public on worker misclassification prevention.

### **Second Meeting of 2021: June 17, 2021, 3:00 p.m.**

#### *Department Updates And Next Steps*

After Chair Hui called the meeting to order and a quorum was established, Task Force members offered updates and comments:

--Director Lindley-Myers provided an update of DCI activities, and Patrick Lennon from DCI's Financial Institutions and Professional Registration (FIPR) discussed FIPR's role relating to worker classification and filings;

--Director Zellers mentioned the FAQ section on DOR's website;

--Acting DES Director Clark shared that DES completes 7,500 investigations per year and uses 1,700 staff hours to assist in employer compliance;

--DWC Director Vetter detailed her division's referral and investigation processes, noting that DWC's Fraud and Noncompliance Unit has 12 investigators who handle approximately 500 investigations. She also noted that a QR code was added several years ago to the Workers' Compensation posters that will take people directly to the website;

--DLS Director Burks discussed his division's role in addressing child labor and minimum wage concerns.

The Task Force raised the following questions:

1. *How can the Task Force better use the information being shared?*
2. *What are the joint opportunities that the Task Force can use?*
3. *Is there an opportunity to create broader awareness?*

As the Task Force discussed these questions, members noted the importance of communicating with constituents in languages other than English, the need for interpretative and online services, and the types of outlets or media that would best share large amounts of data. Additionally, the question was raised regarding whether it was possible to identify the top five industries, relative to the data, that have the potential for misclassification.

Based on the foregoing, the Task Force decided to create two working groups: 1) Statutory Regulation and Process, and 2) Educational and Outreach Opportunities.

**Third Meeting of 2021: September 23, 2021, 3:00 p.m.**

*Working Group Updates*

After Chair Hui called the meeting to order and a quorum was established, the discussion turned to the working groups established in the June meeting:

--The Statutory Regulation and Process working group met on August 4 with representatives from DCI, DOR, DES, and DWC. The group discussed each department's/division's standards for determining whether a worker should be classified as an employee or an independent contractor. DWC and DES use different standards to classify workers: DES places the burden on employers to show that workers are independent contractors, while DWC places the burden on workers to show that they are employees. The DES standard cannot be changed, as doing so would render it out of conformity with federal law;

--The Educational and Outreach Opportunities working group raised the issue of how to better utilize touchpoints with each department and the business community. Chair Hui noted that DOLIR compiles a monthly report on worker misclassification. The most recent DOLIR data reflects that the top five industries for worker classification investigations are: 1) construction, 2) administration and waste management; 3) accommodations and food service; 4) health care and social assistance; and 5) retail trade. Per the most recent report, DOLIR investigated 6,511 reports of misclassification which impacted 2,908 workers. DOLIR shares this information with DOR.

Additional group discussion revealed the following information:

--DOR does not have substantial data on the issue of worker misclassification, and DOR does not conduct active outreach to outside groups. Between 2015-20, DOR auditors conducted 20 audits that had findings involving independent contractor status. DOR websites and brochures direct the public to DOLIR and the IRS for additional information;

--DCI places the emphasis on insurers to educate business owners about worker classification standards;

--DWC includes misclassification investigations along with other types of fraud and noncompliance investigations and that, per the division's most recent report, 630 workers were impacted by their employers' failure to ensure that their workers were properly classified. Construction was the top industry for compliance issues;

--DOLIR performs outreach through its Speakers' Bureau. DOLIR received many speaking requests Bureau in 2017-18, but current options to present are limited by the COVID pandemic;

--DLS wage and hour investigations typically involve "1099 employees" (i.e., independent contractors). DLS seeks to educate employers and to refer them to either the United States Department of Labor or to DWC's Fraud and Noncompliance Unit. DLS's work is limited by the fact that Missouri does not have a wage collection law. Occasionally, prevailing wage issues may have a misclassification component (for example, someone who performs masonry work is mistakenly classified as a laborer);

--DES conducts investigations on audits, tips, etc. and that the Division has completed 6500 investigations and issued 2900 rulings;

Mr. Nau, public member, stated that he would like to explore the issue of misclassification, specifically within the trucking industry. Chair Hui agreed that further exploration of trucking and other industries (such as construction, food service, health care, and retail trade) would be beneficial in 2022 so that task force members can better understand why misclassification happens and create best practices to promote correct classification.

**Fourth Meeting of 2021: December 16, 2021, 3:00 p.m.**

*Moving Ahead to 2022*

After Chair Hui called the meeting to order and a quorum was established, the task force discussed the desire to develop resources and communication outlets so that employers can better understand proper worker classification. The task force explored the idea of using case studies from their own agencies and sharing examples with the entire group to learn how previous misclassification issues have been resolved. A schedule of 2022 meetings will be established by the end of January.